IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 802 OF 2006

Sudershan Wadia .. Petitioner .

vs.

M/s. Titan Industries Ltd.,

& Ors. .. Respondents.

Mr. Rahul Rao i/by I.V. Rao for petitioner.

Mr. Amjad Sayyed, AGP., for respondents 2 to 4.

Mr. Sanjay Kothari a/w Avinash Joshi i/by

Mulla & Mulla for R. No. 1.

CORAM : S.U. KAMDAR, J.

DATE : 2nd May, 2006.

P.C.:

. The present writ petition is filed challenging the order dated 22.3.2005 passed by the Commissioner,

Konkan Division, Bombay in appeal being no. Appeal/Desk/MRCA/459/04.

2. Some of the material facts of the present case briefly enumerated are as under -

3. There was a leave and licence agreement entered into by and between the petitioner and the respondent company dated 1.3.1997. Under the terms and conditions of the leave and licence agreement the respondent company has taken on licence Flat No. 502, New Jaldarshan, Bandra, Mumbai 400 050. The said leave and licence agreement was from 1.3.1997 and was to expire on 29.2.2000 at the expiry of 36 months period. Under the terms and conditions of the said leave and licence agreement the respondent company as a licensee deposited a security deposit of Rs. 42,35,000/- as provided under clause 3 of the said agreement. Clause 5 of the agreement provided that if the respondent company fails to vacate the premises at the request of the licensor i.e. the petitioner herein at the expiry of the licence period of 36 months i.e. 29.2.2000 as stated in the said agreement then the security deposit shall be liable to be automatically forfeited and this right of forfeiture was without prejudice to the licensor's rights under the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947. Under Clause 6 of the agreement licensee was also required to execute performance guarantee for an amount of Rs. 1,25,00,000/- guaranteeing vacant and peaceful possession of the flat to the petitioner on expiry of lease period. Clause 13 provides that the licensee shall hand over peaceful and vacant possession of the flat to the petitioner

in good condition on termination of the leave and licence agreement and on the licensor i.e. the petitioner returning the amount of security deposit furnished to the licensee. Under clause 14 of the said agreement it is provided that on expiry of the licence period and handing over vacant, quiet and peaceful possession of the said flat the licensor shall refund the interest free security deposit furnished to the licensor by demand draft payable at Mumbai.

4. Prior to the expiry of the licence on 29.2.2000 the respondent company by their letter dated 15.2.2000 offered to hand over the possession of the said premises on 1.3.2000 i.e. on expiry of the said licence period. On expiry of the said period, the petitioner has addressed a letter dated 24.2.2000 that it is not possible for him to reach Bombay on 1.3.2000 and, therefore, suitable date be fixed in third week of March, preferably on a Saturday or Sunday for handing over and taking over possession of the flat. By a further letter dated 17.3.2000 the respondent company once again made a request to make an arrangement to take vacant possession of the flat on 31.3.2000 and for returning of security deposit amounting to Rs. 42,35,000/-. The respondent has thereafter addressed a letter dated 24.4.2000 once again requesting to accept the possession of the said flat

and wanted to fix the date of 15.5.2000. Instead of taking possession and refunding the security deposit the petitioner made an application was moved before the Competent Authority, Konkan Division, Mumbai for handing over vacant possession of the said flat. The competent authority by its judgment dated 10.9.2004 directed the respondent to hand over the vacant possession of the said premises to the applicant and further the respondents were directed to pay arrears upto 31.3.2000 and in so far as the amount of return of the security deposit and bank guarantee is concerned, no order was passed by the competent authority and directed that the said issue be decided in a civil suit which is filed by the respondents restraining the petitioner from enforcing Bank Guarantee. Being aggrieved by the said order, an appeal was preferred to the Addl. Commissioner, Konkan Division, Bombay who has by the impugned order set aside the order passed by the Competent Authority inter alia holding that there is no default on the part of the respondents to hand over vacant possession of the premises since they have offered to do so by their various letters including the letters dated 15.2.00 and 17.3.00. It has been further held by the Authority that it is the petitioner who was not inclined to accept the possession of the said flat by complying with his part of obligation to refund the security deposit. On the aforesaid basis, the revision application has

been allowed and the order passed by the competent authority is set aside by holding that there is no default on the part of the respondents to hand over vacant possession as per the terms and conditions of the leave and licence agreement.

5. Today, at the hearing of the present petition I once again asked the petitioner that if he is willing to refund the security deposit without interest to the respondents then I will direct the respondents to hand over vacant possession of the flat to them immediately. However, the learned counsel appearing for the petitioner has stated that he has instructions not to pay accept any such offer and that his client is not inclined to refund the security deposit. On merits, he has further submitted that that the respondent has not given possession of the flat from 29.2.2000 till today and, therefore, there is no question of refund of security deposit. He further submitted that there was default on the part of the respondent in not vacating the possession of the premises and, therefore, also the petitioner is entitled to forfeit the security deposit as per clause 5 of the leave and licence agreement. It has been thus submitted that the petitioner should be handed over possession of the premises without any obligation of making payment of any security deposit or return of the bank guarantee. He has submitted that the

respondents if desires to have their security deposit back then they may file a suit for the same.

6. In my opinion, I do not find any infirmity in the order passed by the Commissioner, Konkan Division, Bombay. The leave and licence agreement is on record. The leave and licence agreement unequivocally states that the respondent will hand over possession of the flat to the petitioner and simultaneously the petitioner is required to refund the amount of security deposit. On the correspondence which has been set out hereinabove, it is clear that the petitioner is not willing to refund the security deposit right from the date i.e. 29.2.2000 which is even before expiry of period of Leave and Licence and inspite of offers to hand over possession he has refused to take possession from the respondents herein. The contention of the petitioner that he should be handed over possession of the premises without refund of the security deposit cannot be accepted because the leave and licence agreement contained reciprocal obligations on both the parties which are required to be complied with simultaneously. Even today, the learned counsel for the petitioner has not accepted the offer to take back possession of the premises which the respondents are even today ready and willing to do so provided the security deposit is refunded by the petitioner herein and bank guarantee

duly cancelled is returned to them. In that light of the aforesaid facts, I do not find any error on the part of the authority in passing the order that the respondents are not in default in respect of the leave and licence agreement since they have offered to return the said premises on repayment of security deposit. In that light of the matter, the petition must fail and the same is dismissed accordingly. No order as to costs.